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CURRENT TOPICS

Mr. Gerald Upjohn, K.C.

THE latest appointment to the Bench of the High Court is that of Mr. GERALD RITCHIE UPJOHN, K.C., in place of Mr. Justice ROMER, who has been appointed a Lord Justice of Appeal. Mr. Upjohn, known as a profound lawyer and a skilful advocate, leaves the Chancery Bar poorer, and the Bench is enriched by his elevation. He comes young to the Bench, at the age of forty-eight, after twenty-one years at the Chancery Bar. Son of another famous Chancery silk, he was educated at Eton and Trinity College, Cambridge, where he took firsts in the Mechanical Sciences Tripos and in the Law Tripos, Part II. He took silk in 1943 and became a bencher of Lincoln's Inn in 1948. During the war he served in the Welsh Guards as a colonel. In 1944 he became vice-president of the Allied Control Commission.

The Rent Acts: New Doctrines

WRITING in a Sunday newspaper, an eminent surgeon recently pointed out that a new remedy may produce new diseases as well as cure old ones. The theme of a publication entitled "The Rent Acts and the Invention of New Doctrines," by Mr. R. E. MEGARRY, reprinted (in brochure form) from the October, 1951 issue of the *Law Quarterly Review*, and published by Stevens & Sons, Ltd., is somewhat similar. The author is, of course, well known as an authority on the subject of rent restriction and as one who possesses a healthy critical faculty and an equally healthy fertile imagination. The first part of the brochure subjects a group of decisions—*Thompson* v. *Earthy* [1951] 2 All E.R. 235, *Rogers* v. *Hyde* [1951] 2 All E.R. 79, and *Marcroft Wagons, Ltd.* v. *Smith* [1951] 2 All E.R. 271, concerning respectively the classification-defying status of a deserted wife left in occupation of the matrimonial home, of a party to a peculiar "sharing agreement," and of an occupier who had been given permissive occupation out of kindliness but had paid "rent"—to critical examination; the courts concerned declined to consider those affected anything but licensees; but were they such? Secondly, the author has much to say about the decision in *Francis Jackson Developments, Ltd.* v. *Hall* [1951] 2 All E.R. 74, in which the court, unnecessarily, according to him, accorded the status of "statutory tenant" to a sub-tenant of furnished premises during suspension of notice to quit. (Incidentally, a Divisional Court has, by way of further complicating matters, since taken a different view of the effect of s. 11 of the Landlord and Tenant (Rent Control) Act, 1951, from that taken by the court in this case: *R.* v. *Folkestone and Area Rent Tribunal; ex parte Sharkey* (1951), 95 SOL. J. 730.) And, lastly, the considerable implications of the decision in *Moodie* v. *Hosegood* [1951] 2 All E.R. 582 (H.L.) (transmission of protected tenancy on death: the case has been called the "widows' charter" case, but the effect is, as the writer points out, not limited to widows) are examined with thoroughness and ingenuity; and a set of hypothetical problems visualised by the author as resulting from that decision will provide ample material for those concerned with arranging moots.

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Rent Control Injustice

IF something positive is at last to be done towards ending the chaos of the rent control laws there will be few to call it premature. The most pressing problem at present is the prevention of the creation of slums owing to the prohibitive cost of repairs. Mr. J. A. ARNOLD-FORSTER, President of the Royal Institution of Chartered Surveyors, in a paper read to members on 12th November, said: "The root of the trouble is an inflexible limitation of rents of some 10,000,000 dwellings to the sums that were paid in 1939 or some earlier date, in spite of the fact that the outgoings and particularly the cost of repairs, which must be met out of such rents, have increased threefold in the last twelve years." He referred to the institution's recent memorandum suggesting that rents should be increased by an appropriate percentage of the statutable deductions for rating purposes, but emphasised the short-term nature of this proposal, which would ultimately have to be merged in any long-term legislative solution. The same theme occurs in a memorandum sent, on 12th November, by the General Council of the Sanitary Inspectors' Association to the Minister of Housing and Local Government. Property owners, it is there averred, not only fail to carry out works necessary to keep the houses in a satisfactory condition but vigorously resist enforcement action under the nuisance provisions of the Public Health Act, on the grounds that local authorities are acting unreasonably in requiring the expenditure of sums in excess of a proper proportion of the rent yield, or even of the total net rent yield. The memorandum states that any rent increase granted to owners should be made conditional on the maintenance of their houses in a reasonable state of repair, and owners should be required to obtain a certificate of fitness from the sanitary inspector before they could claim any increase. An allowance for increased repairs should be made for income tax purposes. In cases where the house owner signifies inability on economic grounds to comply with notices for repair, the local authority, it is stated, should be empowered to acquire houses.

Enrolment of Deeds in the Central Office

WHEN the Enrolment of Deeds (Fees) Regulations, 1922, were made, the use of photographic copies of documents was not the common feature of legal practice that it has become to-day. In fixing the fee payable for making and examining office copies of enrolled deeds, therefore, those regulations did not distinguish between photographic and other office copies, and the fee was fixed at 8d. per folio of seventy-two words. Separate fees have now been prescribed for the making and examination of photographic office copies by the Enrolment of Deeds (Fees) (Amendment) Regulations, 1951 (S.I. 1951 No. 1937 (L. 9)), which fix a fee of 2s. per photographic foolscap sheet for the first copy and 1s. 6d. for every additional copy on the same application. These amounts are respectively doubled in the case of photographic sheets over foolscap size. The new fees become operative on the 1st December.

Salaries of Judges and Magistrates

UNDER the Judicial Offices (Salaries, &c.) Bill, the text of which was published on 14th November, it is proposed to increase the salaries of county court judges and metropolitan magistrates from 1st July, 1951, as follows: From £2,000 a year to £2,800 for county court judges, from £2,300 to £2,800 for the chief of the metropolitan police magistrates and from £2,000 to £2,500 for metropolitan police magistrates. Similar increases are proposed to be made retrospectively in the salaries of stipendiary magistrates and the chairman and deputy chairmen of the London Sessions. Payment is proposed of circuit allowances to the Lords Commissioners of Justiciary in Scotland and the Lord Chief Justice in Northern Ireland, and of travelling allowances to sheriffs-substitute. The salaries of judges of the High Court of Northern Ireland will, when the Bill is passed, be increased from £3,000 a year to £3,500 a year. The total cost of the proposed increases will be about £44,500 a year.

Justices' Tenure of Office

OVER the signature of a number of eminent names, including those of the BISHOP OF BATH, LORD HORDER and LORD TEDDER, a letter appeared in *The Times* of 13th November, 1951, drawing attention to the vital constitutional issue raised by the recent undertaking given by a justice of the peace not to sit as a magistrate for a year, after being told by the then Lord Chancellor that she would be removed from the commission if she did not give the undertaking. The Lord Chancellor's power to remove a justice, they argued, should be confined to instances of incapacity or misconduct, and they repudiated the proposition that the exercise of that power in a particular case was not suitable for public discussion. As a safeguard against arbitrary dismissal they recommended that a right of appeal should be given from the Lord Chancellor's decision to a judicial tribunal. The argument against setting up such a tribunal, however, is that it might be considered Gilbertian to provide for judgments to be delivered on the conduct of judges. There is a constitutional safeguard both for the rights of the subject and the respect due to judges in the rule that they hold office *quamdiu se bene gesserint*. The application of this principle to magistrates, who, as the signatories to the letter state, try all but 3 per cent. of the criminal cases in England and Wales, would appear to meet any future situation.

Law Reform and the New Parliament

MR. ROBERT S. W. POLLARD, who is well known both as a solicitor and a zealous worker in the field of law reform, has pleaded, in the correspondence columns of *The Times* (16th November), that the new Parliament should devote some time to dealing with measures of law reform which are largely non-contentious. "I have in mind," he wrote, "the proposals of the Porter Committee for the reform of the libel law; the report of the committee on the limitation of actions (1949), which proposed the repeal of the special provision whereby actions against public authorities must be brought within one year; the pre-war reports of the law revision committee on the Statute of Frauds and the doctrine of consideration; the recent report of the committee on the county courts so far as it refers to legislative action; some of the proposals in the interim reports of the committee on High Court procedure; the report of the committee on depositions in the criminal courts issued in 1949, and the proposals made in July, 1951, for amending the law of intestate succession. It is also to be hoped that the work of improving the Statute Book by consolidation Bills will proceed without interruption. The proposals of the Royal Commission on betting, lotteries and gaming made in March this year are no doubt more controversial, but if enacted they would bring the law on this subject into line with moderate opinion and save it from the contempt in which it is now too often held. The suggestion that there should be an appeal to the courts of justice in all cases where there is a dispute under a statutory regulation is only one of many current suggestions for the reform of administrative law."

TOWN AND COUNTRY PLANNING: ENFORCEMENT NOTICES—II

In the first part of this article the various tests to be applied to an enforcement notice under the Town and Country Planning Act, 1947, were discussed, leaving the appropriate procedure to dispute a notice to be dealt with in this part.

In order to set the scene for a discussion of the appropriate procedure it is necessary to describe the provisions to be found in the Act itself, (1) for contesting a notice and (2) embodying the sanctions which lie behind a notice, and also the effect on these provisions of the decision of the Divisional Court in the case of *Perrins* v. *Perrins* [1951] 2 K.B. 414.

At the outset the reader was advised, on receipt of the enforcement notice, to make an immediate note of the date specified in it on which it was to take effect.

By s. 23 (3) of the Act the taking effect of a notice can be postponed in two ways, namely :—

(1) by the submission by anyone of an application for planning permission to retain the offending development ;

(2) by the making of an appeal by any person on whom the notice has been served to the court of summary jurisdiction for the petty sessional division in which the land concerned lies in accordance with s. 23 (4).

The powers of the court on an appeal to them are set out in s. 23 (4) as follows :—

" . . . the court—

(*a*) if satisfied that permission was granted under this Part of this Act for the development to which the notice relates, or that no such permission was required in respect thereof, or, as the case may be, that the conditions subject to which such permission was granted have been complied with, shall quash the notice to which the appeal relates ;

(*b*) if not so satisfied, but satisfied that the requirements of the notice exceed what is necessary for restoring the land to its condition before the development took place, or for securing compliance with the conditions, as the case may be, shall vary the notice accordingly ;

(*c*) in any other case shall dismiss the appeal : "

It is clear from the recent decision of the Divisional Court in *Buckinghamshire County Council* v. *Callingham and Clarke* (1951), 95 Sol. J. 728, that under (*a*) the court have power to quash a notice as to part only of the development of which it complains.

A proviso to the subsection empowers the court where it adopts either of courses (*b*) or (*c*) to postpone the operation of the notice for not more than twenty-eight days from the date of their decision.

So much for the provisions for contesting a notice to be found in the Act itself. The sanctions behind a notice are contained in s. 24, and are as follows :—

(1) Where the steps required to be taken are other than the discontinuance of a use, s. 24 (1) empowers the authority to enter on the land, take the steps themselves and recover their reasonable expenses of so doing as a simple contract debt from the person who is then the owner of the land. The subsection contains an important provision that if this person, "having been entitled to appeal to the court under the last foregoing section, failed to make such an appeal, he shall not be entitled in proceedings under this subsection to dispute the validity of the action taken by the local planning authority upon any ground which could have been raised by such an appeal."

(2) Subsection (3) provides the sanction for non-discontinuance of a use as follows :—

" Where, by virtue of an enforcement notice, any use of land is required to be discontinued, or any conditions are required to be complied with in respect of any use of land or in respect of the carrying out of any operations thereon, then if any person, without the grant of permission in that behalf under this Part of this Act, uses the land or causes or permits the land to be used, or carries out or causes or permits to be carried out those operations, in contravention of the notice, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds ; and if the use is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding twenty pounds for every day on which the use is so continued."

In *Perrins* v. *Perrins* [1951] 2 K.B. 414 the Southport Borough Council had served an enforcement notice under s. 23 on the respondent requiring the discontinuance of the use of certain land as a site for caravans and for camping, which use the notice alleged had been begun since 1st July, 1948. In fact, the use began before this date and there had been no development since. The respondent did not apply for permission or appeal to the justices under s. 23 (3) and (4), and the notice took effect. The appellant, the town clerk, thereupon preferred an information against the respondent under s. 24 (3), but, at the hearing, the justices accepted the contention of the respondent that, no development having taken place since 1st July, 1948, there had been no contravention for the purpose of s. 24 (3). The town clerk appealed by way of case stated and the Divisional Court allowed the appeal. Lord Goddard, C.J., said : " Whether the corporation were right or wrong in the view which they took here, it seems to me that the Act provides that if a planning authority choose to serve an enforcement notice, and that notice is not challenged within twenty-eight days, it becomes effective, and there is the end of the matter." He then referred to the express provision (set out above) in s. 24 (1), limiting the defences which an owner who has not appealed against a notice can raise in an action by an authority to recover money expended in doing work, and said : " It would be very odd that he should not be entitled to take objection to the notice when summoned for the cost of doing the work while still being entitled to take objection when he is prosecuted under s. 24 (3) for failing to observe its terms . . . The offence is doing something in contravention of the notice, the notice which the previous section says shall be effective at the end of twenty-eight days unless there is an appeal . . . once it is effective, it is the duty of the person who has had the opportunity of appealing against it, and has not appealed, to abide by it."

If the appeal procedure under s. 23 (4) is applicable to the grounds on which a notice is to be challenged, it must be used, otherwise the notice will take effect and the grounds cannot be raised later. But it does not fit all the possible grounds.

Under s. 23 (4) a notice can only be quashed if the justices are satisfied that permission was granted, or was not required, or that the conditions have been complied with. This procedure cannot, therefore, be successfully used to challenge a notice on the ground that a local authority has not properly exercised its discretion, that the notice has not been served on the right person or persons, or that its contents do not comply with the Act, and it is arguable as to whether it is appropriate to challenge a notice on the ground that it is

out of time or that the acts complained of do not constitute development.

The two last-mentioned grounds are particularly important ones, and the applicability of the procedure under s. 23 (4) to them must be considered in some detail.

Where it is alleged that the notice is out of time, two cases must be distinguished, namely :—

(1) where the notice is out of time because the development took place before 1st July, 1948, and the notice has been served after 1st July, 1948 ;

(2) where the notice is out of time because the development took place after 1st July, 1948, and the notice has not been served within four years.

In the first case no permission under Pt. III of the 1947 Act was required ; this is only required where the development takes place after 1st July, 1948. Although it can be argued that, as s. 23 only extends to development of land carried out after 1st July, 1948, the notice is invalid if the development took place before this date and that consequently the appeal procedure of s. 23 (4) is inapplicable, the writer is of opinion that it would be open to the justices to quash the notice on the ground that no permission was required. Certainly in *Perrins* v. *Perrins, supra*, it was assumed without argument that the justices would have had this power had the respondent appealed under s. 23 (4). Consequently, in the first class of case, the client should be advised to appeal under s. 23 (4).

In the second class of case, the procedure under s. 23 (4) seems inapplicable. If the development took place after 1st July, 1948, even though more than four years before service of the enforcement notice, it is not open to the justices to find that no permission was required or that permission has been granted. The expiry of the time limit for serving an enforcement notice does not grant permission for the development.

The other case where the propriety of appealing under s. 23 (4) is doubtful is where it is alleged that the notice is bad because the acts complained of do not constitute or involve development. On the one hand, it can be argued that the whole procedure is dependent on development as defined in the Act having been carried out, that the word " development " where it appears in s. 23 (4) (*a*) must be given the meaning assigned to it by s. 12 of the Act, and that the justices, in dealing with the appeal, must do so on the assumption that what is complained of in the notice is development, confining themselves to the questions whether permission for it has been granted, or by virtue of s. 12 (5) of the Act is not required. In the writer's opinion this is too narrow a construction. It is for the justices to consider whether permission is required under the Act in respect of the development to which the notice relates. The notice is required by the Act to describe the development. Suppose that the notice describes this as " the keeping of your motor car in the front garden of your house." Clearly, no permission is required for this, the car being the car of the owner of the dwelling-house, because by s. 12 (5) the use of any land within the curtilage of a dwelling-house for any purpose incidental to the enjoyment of the dwelling-house as such is not development, and there would seem to be no reason why the justices should not so hold. Where, therefore, the description in the notice is such that it can be shown that there is no development within the meaning of the Act, in the writer's opinion the justices can quash the notice, and an appeal under s. 23 (4) is appropriate.

It seems, however, that, on an appeal under s. 23 (4), the justices are bound to accept the description given in the notice, and that, if what is described is clearly development, it is not open to the appellant to adduce evidence to show that the notice has misdescribed what he is doing. Thus, if the notice alleges that the defendant is using a private dwelling-house as a private hotel, which would be development, it is not open to the defendant to say that all he is doing is taking lodgers privately in his family dwelling-house, which would not be development. In such a case he would, it seems, have to reserve his defence until he is prosecuted under s. 24 (3). It is possible that in some cases the description in the notice may be neutral and consistent, both with development and no development, according to the degree of use, e.g., if the notice alleges that a private dwelling-house is being used for taking in lodgers ; whether or not there is development may turn on whether the number of lodgers being taken in is large, when it may be that the primary use will cease to be that of a private dwelling-house, or small, when they may be absorbed into the family and the primary use remains that of a private dwelling-house. In such a case there would seem to be no reason why an appeal under s. 23 (4) should not be lodged and evidence adduced to show that the degree of use is not high enough to constitute development.

In the third part of this article further consideration will be given to the procedure for challenging notices, and the circumstances in which an application should be made for planning permission will be discussed together with other miscellaneous matters.

R. N. D. H.

Procedure

XIII—CHARGING AND GARNISHEE ORDERS: THIRD PARTY PROBLEMS

THE hazards which lurk for a creditor bent on enforcing a judgment against a debtor who is not sufficiently co-operative to offer immediate satisfaction or some acceptable instalment plan include, besides the difficulty of ascertaining in what form the assets of the debtor exist, the constant risk that he may not be the only contender for the particular asset he chooses to attack. Upon the constitution of the debtor's property, so far as it can be ascertained, will depend the form of execution or other means of enforcement adopted by the creditor ; when a third party appears on the scene to claim an interest in the chosen asset there emerges a question of title or of priority which is to be resolved in one of several ways according to the nature of the execution proceedings.

Thus, where a third party claims any money, goods or chattels taken or intended to be taken under a writ of *fi. fa.*, the sheriff may interplead under Ord. 57, r. 1 (*b*), and the dispute is fought out between the creditor and the claimant. A third party claiming to be interested in sequestered property may apply by summons or motion for leave to be examined *pro interesse suo*, whereupon the court may direct an inquiry. Two decisions of about a year's standing illustrate procedures by which a conflict of claims against a judgment debtor may be brought before the court in cases where some other methods of enforcement of the judgment have been adopted.

Hawks v. *McArthur and Others* [1951] 1 All E.R. 22; *ante*, p. 29, concerned a charging order. This, it will be remembered, is

a means whereby a judgment creditor may seek satisfaction of his judgment through the medium of a compulsory judicial charge in his favour on the debtor's interest in stocks, shares, government funds or annuities, the income thereof, or any fund in court. The statutory authority is the Judgments Act, 1838, and R.S.C., Ord. 46, r. 1, merely refers for procedure to s. 15 of that Act. Section 15 is in somewhat indigestible narrative form, but briefly it provides for an *ex parte* order *nisi* having the effect of an interim injunction restraining transfer; service on the judgment debtor and on the company or stock registrar; and an opportunity to show cause, in default of which the order may be made absolute. Section 14 deals with the effect of the order absolute. The judgment creditor is to have all such remedies as he would have been entitled to if the charge had been made in his favour by the judgment debtor, but he is not to take proceedings to have the benefit of such charge for six calendar months after the order. *Daponte* v. *Schubert* [1939] Ch. 958 settled that sale under order of the court, and not foreclosure, is the appropriate method of realising the charge. The sale is applied for by originating summons, which must be taken out in the Chancery Division no matter in what Division the order absolute was obtained.

Now there are two obvious points in this sequence of steps at which the court might adjudicate upon the claim of a third party to the stock. No doubt a *bona fide* claimant would be heard at any time while the debtor remained the registered owner, for s. 15 of the 1838 Act gives a power of variation or discharge of the order upon the application of the judgment debtor or any person interested. But the trial of an issue between the creditor and someone setting up a title to the property may conveniently be directed before the order is made absolute if the facts are then available, and *Hawks* v. *McArthur and Others* shows us that the same issue can be litigated on the creditor's later summons for leave to enforce the charge by selling the stock. The persons claiming adversely to the creditor would in many cases be appropriately joined as defendants to the summons in any event.

The facts in *Hawks'* case were that the plaintiff creditor had obtained a charging order on shares standing in the name of the first defendant, pursuant to a judgment in a previous action. The order was made absolute, but not before the first defendant had agreed, for value, to transfer the shares to the second and third defendants. The transfers were executed before the date of the order *nisi*, but were never registered, and were in fact executed in disregard of the articles of the company restricting the transfer of shares, the first defendant being still the legal owner of the shares.

The question on the plaintiff's application for sale was whether the agreement made by the first defendant with the second and third defendants operated as a transfer in equity of the shares to them, or whether the failure to comply with the articles vitiated the whole transaction. A charging order operates, Vaisey, J., pointed out, only to charge the *beneficial* interest of the person against whom the order is made. It affects only such interest, and so much of the property affected, as that person could himself validly charge. If, therefore, the agreement did transfer the beneficial ownership from the first defendant, there was nothing left in his hands on which the charging order could take effect.

Distinguishing on its facts *Hunter* v. *Hunter* [1936] A.C. 222, Vaisey, J., held that the transaction between the defendants could not be treated as a nullity having regard to the fact that money passed and forms of transfer were executed. That transaction gave the second and third defendants equitable rights which were prior in point of time to the plaintiff's quasi-equitable rights under the charging order. The summons was accordingly dismissed (without costs), with the result, as the learned judge said, that the charging order became nothing but a charging order *nisi*.

The other decision reported this year in which priorities in an execution were the topic is *Curran* v. *Newpark Cinemas, Ltd., and Others* [1951] 1 All E.R. 295, an appeal to the Court of Appeal from a county court. The mode of enforcement attempted by the creditor was by way of garnishee proceedings, which in the county court take roughly the same course as in the High Court. The creditor had been confronted, on issuing his garnishee summons, with a form of direction and authority of prior date, addressed to the garnishees by the judgment debtors and instructing them "pursuant to the arrangements for valuable consideration which we [the debtors] have made with [a bank]" to pay the garnished debt to the bank. The bank alone was to have the power of varying or cancelling the instructions. It was contended that this document was an assignment of the debt. There was no evidence that the bank knew of the direction, and on this ground and on the strength of certain correspondence between the garnishees and the creditor, in which the direction had not been mentioned, the county court judge held that no assignment had been proved. "I considered," said His Honour's note, "that an assignment could not become effective until the assignee accepted it as such." A garnishee order was therefore made.

On appeal it was argued for the garnishees that a transfer of property to A without his knowledge was effective to pass the property, subject to A's right of repudiation when he learned of the transfer, and that the direction and authority in the present case operated as a legal assignment of the debt by virtue of s. 136 (1) of the Law of Property Act, 1925. The Court of Appeal, in a judgment read by Jenkins, J., was not disposed to regard the direction and authority standing by itself as fulfilling the terms of s. 136, even allowing for the fact that notice had admittedly been received by the garnishees. It was not in point of form an assignment. On the other hand, if it were true that the direction was given in pursuance of an arrangement for valuable consideration with the bank, the joint effect of the agreement with the bank and the direction was to constitute a good assignment of the debt. The court remarked that, while there was no evidence that the bank had been given notice of the direction, there was no evidence that it had not. The direction afforded at least substantial grounds for supposing that there may have been a good assignment, and the judge was wrong to make his order in face of the document.

It is to be observed that the alleged assignment was set up in the proceedings not by the bank, which was *prima facie* entitled to the benefit of the document, but by the garnishee. A garnishee is, as Jenkins, L.J., said, in a difficult position. He must obey any order made against him, without being protected by the order from claims under a prior assignment of which he had notice. However, there is provision in the procedure both of the High Court and the county court for securing that the real claimant in such a case shall be made a party to an issue so as to be bound by the court's order. By C.C.R., Ord. 27, r. 11, corresponding to R.S.C., Ord. 45, rr. 5 and 6, the judge may order that a person who claims the garnished debt, or to whom it is suggested that the debt belongs, shall appear and state his claim. The Court of Appeal thought that the proper course to adopt in the circumstances of the present case, and the matter was remitted to the county court accordingly, the garnishee order being in the meantime discharged.

J. F. J.

A Conveyancer's Diary

EXTENDED MEANING OF "WIDOWHOOD" IN TESTAMENTARY GIFTS

THE word "widow" in wills has frequently been construed to include a quasi-widow (to adopt the convenient expression used by Lord Selborne, L.C., in *Re Boddington* (1884), 25 Ch. D. 685), and the cases on this matter present no particular difficulty until we come to *Re Gale* [1941] Ch. 209. There are many reported decisions on this point of construction, the majority depending very largely on their own particular circumstances, but a common thread runs through the most authoritative of them: gifts expressed to be made to a widow or during widowhood are not construed so as to make the status of widowhood, in the strict sense, a condition of the operation of the gift unless the intention to import such a condition is perfectly clear. This principle (if one can elevate a canon of construction into a principle) was apparently lost sight of in *Re Gale*, with unsatisfactory results.

The best illustration of the attitude of the courts to this question is found in *Re Wagstaff* [1908] 1 Ch. 162. The testator by his will gave certain chattels to "my dear wife Dorothy Josephine." He appointed her, under the designation "my said wife," one of his executors, and he directed that the annual income of his residuary estate should be paid to "my said wife during her life if she shall so long continue my widow." Lastly, the testator directed that "after her decease or second marriage" his estate should be held on certain trusts over. The person described as the testator's wife was not in fact his wife. Many years before she met the testator she had married one J, who was living at the date of the proceedings, and this marriage had never been dissolved although the parties to it separated immediately afterwards and thenceforward by mutual consent lived apart. The testator and his "wife" later went through a ceremony of marriage, and it was held on the evidence that the testator knew that his "wife's" husband was living when this ceremony took place. After the ceremony the testator and his "wife" lived together as a married couple until the testator's death.

The Court of Appeal affirmed the decision below that the "wife" was entitled to the benefits conferred upon her by that description in the will, on the ground that the testator knew that when he used the expressions "wife," "widow" and the like, those were not the expressions required accurately to describe the situation of the person he called his "wife." Sir H. H. Cozens-Hardy, M.R., said that if he wanted any aid to the interpretation in the body of the gift of the income of the residuary estate, he would find it in the language of the gift over; Sir George Farwell, L.J., relied on the language of the gift over to construe the principal gift, and reading them together concluded that what the testator had meant was that his "widow" should continue to receive the income until she should go through a further, a future, ceremony of marriage, and in that case the estate should go over.

Re Hammond [1911] 2 Ch. 342 is a very similar case. Some six years before the "wife" met the testator her husband had disappeared, and by the time that the testator and she went through a ceremony of marriage they were, as was found, justified in assuming that the husband was dead and they did believe him to be dead. The testator by his will gave certain chattels to "my wife Elizabeth," and he gave her certain other interests in his estate "during her widowhood" and after her decease or second marriage, over. Parker, J., construed the reference to "widowhood" in the secondary sense of "until she dies or marries again" and refused to regard it as a condition of the gift on the ground that such a construction would be capricious and unjust.

A similar interpretation has been put upon gifts phrased in this way when the testator has left a real widow; see, e.g., *Re Smalley* [1929] 2 Ch. 112, where the testator left his estate to "my wife Eliza Ann Smalley" and it was claimed both by Eliza Ann, with whom the testator had gone through a ceremony of marriage and with whom he had lived up to his death, and by his real widow whom he had married and deserted previously to meeting Eliza Ann. The word "wife" was construed in a secondary sense, as in the earlier cases.

Circumstances can, however, occur in which a reference to widowhood will be interpreted as a condition. The decision in *Re Boddington, supra*, is an example. In that case the testator married E C, and shortly afterwards made a will whereby he gave the proceeds of sale of his residuary estate to his trustees upon trust (*inter alia*) to pay to his wife E C a legacy of £200, and in addition thereto to pay to his said wife, so long as she should continue his widow and unmarried, an annuity of £300. The year after the marriage had taken place it was declared void by reason of the testator's incapacity. It was held that E C was entitled to the legacy of £200, although the effect of the annulment of the marriage was that neither at the date of the will nor at the date of the testator's death was she the testator's wife, but that she was not entitled to the annuity. The grounds for this decision were that the words "so long as she shall continue my widow and unmarried" plainly appeared to express that the status of widowhood was a condition of the inception and the duration of the gift.

Now similar words were in fact used by the testator in *Re Wagstaff, supra*, and it may reasonably be asked how, in these circumstances, different conclusions were reached in the two cases. The answer is that in either case the question is one of construction. In the *Wagstaff* type of case, a secondary meaning is given to the references to widowhood and the like because it has first been ascertained that the state of mind of the testator at the date of the will would make the attribution of the primary strict meaning to the expressions in question capricious and unjust. In the *Boddington* type of case there is nothing unreasonable in construing a reference to widowhood strictly. At the date of the will the marriage was still on foot and the testator correctly described the then present and the then future status of his wife by the use of the words "wife" and "widow": there is no question in such cases of delving into the state of the testator's mind at the date of the will for the purpose of ascertaining whether the language he has used should be interpreted other than in accordance with its natural meaning, because in its natural meaning it perfectly accords with the facts as then existing. The determining factor in the former type of case is the state of the testator's mind at the date of the will, and in the latter type of case the intervention of some new circumstances between the dates of the will and the death, respectively, which destroy the basis upon which the relevant provisions were drawn.

By this test *Re Gale* should, I conceive, have been decided otherwise. The testator by his will made provision both for his wife and for one D. He devised one house to his trustees on trust to permit his wife to use it during her life, and another house on trust that his trustees should permit D to use it "during her widowhood." There followed various other gifts, including the gift of an annuity to D "during her widowhood for a period of twelve years." D was a spinster who had known the testator for many years, and she had borne him several children, but there was no question here, as there was in some of the other cases on this point, of any bigamous marriage. In his judgment Sir Christopher Farwell, J., referred extensively to the decisions in *Re Wagstaff* and *Re Boddington*, and came to the conclusion that he should follow the latter. "Here there is a gift to a person for a period which, in fact, can never exist at all . . . There can never be any period during which [D] is or was the [testator's] widow, and all that she is given is an interest during her widowhood. Applying to these facts the decision in *Re Boddington* which is binding upon me so far as relevant, I am, I think, bound to say that [D] is given benefits during a period which in fact has no existence whatsoever. The testator intended to benefit the lady by his will, but he has used language which . . . unfortunately cannot have that effect . . ." ([1941] Ch. 217-218).

There is this distinction to be made between *Re Wagstaff* and *Re Hammond* on the one hand and *Re Gale* on the other, that in the former cases there was a description of the legatee as the "wife" of the testator which gave a direct context for construing the subsequent reference to her "widowhood" in a secondary sense, whereas in *Re Gale* there was not, and could not be, any such description of the legatee. But the earlier decisions do not depend on such a context; they depend on the circumstances as they existed, and were known to the testator at the date of the will; and looked at from this point of view there is no difference between the three cases. On the other hand, the circumstance which seems to me to differentiate *Re Boddington* from all the other cases considered above—the radical change in the situation of the two parties *vis-à-vis* each other between the dates of the will and the testator's death—is entirely absent in *Re Gale*.

If *Re Gale* can be regarded as running counter to the general trend of authority on this particular point of construction, it should be possible to confine its application as an authority to the case with which it dealt—a will conferring benefits both on a wife, described as such, and on a mistress during widowhood. I do not think that it is necessarily an authority for more than that, having regard to the earlier decisions and the reasoning on which those decisions were based. If this impression is correct, the general proposition can be laid down that a gift in a will limited in favour of a person other than the testator's real wife during the period of widowhood can always be construed as a gift limited to a period ending with the legatee's marriage, whether the legatee is described by the testator as his wife or widow or not, provided of course that there is sufficient evidence of the testator's state of mind at the date of the will to justify the construction of the relevant expressions in their secondary sense. If there is anything in *Re Gale* to cast doubt on this proposition it is not supported by cases superior to it in authority.

"A B C"

Landlord and Tenant Notebook

ESTOPPEL AND CONTROL

THE decision in *Dean* v. *Bruce* (1951), 95 SOL. J. 710 (C.A.), in which a county court judge was held to have taken the wrong view of the effect of a misstatement of the standard rent, draws attention to the limitations on the operation of the doctrine of estoppel in rent restriction cases.

The plaintiff had let combined premises—a shop plus living accommodation—to the defendant on a weekly tenancy, the rent being 14s. In fulfilment of the obligation imposed upon him by the Rent Restrictions Regulations, 1940, para. 4 and Sched. II, he supplied a rent book and stated the standard rent therein, making the figure £36 8s. a year. The standard rent was, in fact, £60 a year, so that the plaintiff actually exposed himself to prosecution under the Rent, etc., Restrictions (Amendment) Act, 1933, s. 14 (3) (fine not exceeding £10), and might have been told that if he did not know what the standard rent was he should have provisionally filled in, "will be entered when determined," or words to that effect, and have taken out a summons, under the Rent, etc., Restrictions Act, 1923, s. 11 (*Austin* v. *Greengrass* [1944] K.B. 399); possibly the occasion might have been one in which the Rent, etc., Restrictions (Amendment) Act, 1933, s. 6, entitling the court (in the absence of sufficient evidence about the letting history) to consider the standard rents of similar dwellings in the neighbourhood, might have been brought into use. However, for more than eight years the landlord received the 14s. a week reserved by the agreement; he then discovered that the standard rent was £60 a year and notified an increase corresponding to that sum. The tenant refused payment of the difference and when sued set up that he was a statutory tenant at the old rent.

It will be observed that two propositions were thus advanced: The defendant contended (*a*) that he had become a statutory tenant and (*b*) that his rent was as before. If what the plaintiff had done was indeed to serve notice of increase without serving notice to quit, the defence might well have urged that the effect was nil, as in the famous case of *Kerr* v. *Bryde* [1923] A.C. 16, which was the occasion of the passing of the Rent Restrictions (Notices of Increase) Act, 1923. That statute gave notices of increase the effect of notices to quit—but only if "served in conformity with subs. (2) of s. 3 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920." This point does not appear to have been taken; nor was it taken, incidentally, in *Phillips* v. *Copping* [1935] 1 K.B. 15 (C.A.), in which the court appears to have assumed that because a notice notified statutory increases as well as what it called an increase in the standard rent, it had had the effect of a notice to quit.

But the county court judge held that the plaintiff was estopped by the entry he had made in the rent book from proving that the standard rent was more than £36 8s. a year, and on this point the Court of Appeal disagreed with him.

Estoppel, according to Coke, is "when one is concluded and forbidden in law to speak against his own act or deed, yea, though it be to say the truth" (Co. Litt. 352A), and the law of estoppel is essentially part of the law of evidence. And it was argued for the respondent tenant that the statement in the rent book was one of the terms and conditions of the original tenancy, so that he was, in the language of the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (1), a tenant who, by virtue of the provisions of that Act, retained

possession of the dwelling-house and was entitled to the terms and conditions in question.

One possible answer to this would, I submit, have been that the statement was not a term or condition of the original tenancy at all; but the Court of Appeal dealt with the point on rather different lines. The judgment of Somervell, L.J., first cites *Phillips* v. *Copping, supra*, as authority for the proposition that a landlord may increase a rent which is less than the standard rent to the amount of the standard rent (plus any permitted increases), though no question of estoppel appears to have been raised in that case. It then cites *Regional Properties, Ltd.* v. *Oxley* [1945] A.C. 347, which decided that a proviso for reduction of rent on punctual payment was not a stipulation the benefit of which could be claimed after determination of the contractual tenancy. So it did, but the reasoning was not that such a proviso was not a term or condition, etc., but that it was not a term or condition "consistent with the provisions of this Act." On these lines the judgment reached the conclusion that any effect which the erroneous representation as to the standard rent might have had during the contractual tenancy was exhausted when that tenancy came to an end.

This view is undoubtedly in accordance with the authorities on the law relating to estoppel; the misrepresentation must be part of the transaction affected, and can be corrected. "There is nothing to prevent the party who made the representation from afterwards saying, 'I was mistaken in the representation I made to you and *so far as you have not acted upon* the faith of it I retract it and require you to act as if the representation had never been made'," is the way in which Williams, J., put it in *White* v. *Greenish* (1861), 11 C.B. (N.S.) 209.

The issue actually raised made it unnecessary to consider whether there had ever been a true estoppel at all; and, as the judgment reads, it leaves us in doubt as to what would have been the position if the misstatement of the standard rent had been repeated in a rent book after determination of the contractual tenancy. It might easily have happened that the plaintiff had given notice to quit or of increase of rent before he discovered his mistake; would he, then, have been estopped?

In my submission, he would not; and perhaps the short answer is that a statutory tenant is one who retains possession *in invitum*, the landlord thus being able to say: "I did not make the misstatement with a view to your staying on; far from it"; which, on the authorities, would suffice. But, apart from that, a good deal has been done to show how difficult it may be to avail oneself of the doctrine of estoppel in rent restriction cases.

In *J. & F. Stone Lighting and Radio, Ltd.* v. *Levitt* [1947] A.C. 209, an agreement to the effect that 10s. a week was the standard rent of a dwelling was held not to prevent the landlord from asserting that the Acts did not apply because that figure was less than two-thirds of the rateable value of that dwelling. In *Welch* v. *Nagy* [1950] 1 K.B. 455 (C.A.), a letter describing premises as "the above-mentioned dwelling-house, furnished . . ." was held not to preclude the tenant who had written it from proving that the house was not (on that occasion) let to him furnished. An attempt might, no doubt, be made to distinguish these authorities in the circumstances which I have visualised (or in the actual circumstances of *Dean* v. *Bruce*) by pointing out that in those two cases the accuracy or otherwise of the representation affected status: "It is idle," said Lord Thankerton in the former, the passage being cited by Asquith, L.J., in the latter, "to suggest that either estoppel or *res judicata* can give the court a jurisdiction under the Rent Restrictions Acts which the statute says it is not to have"—for in *Dean* v. *Bruce* the premises would be controlled whether the standard rent was £36 8s. or £60 a year. But a third authority, that of *Solle* v. *Butcher* [1950] 1 K.B. 673 (C.A.), would, in my submission, dispose of the objection. For in that case it was held that the principle applied no less to a misstatement affecting the amount, not the existence, of a standard rent. Bucknill, L.J., after reading a passage from the judgment of Asquith, L.J., in *Welch* v. *Nagy*, said: "It seems to me that the same principle would apply in this case, and that no rule of estoppel can oust the court from its jurisdiction to decide whether the rent claimed in respect of any dwelling-house infringes the provisions of s. 1 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, which declares that, subject to the provisions of the Act, where the rent of any dwelling-house to which the Act applies is increased, then, if the increased rent exceeds by more than the amount permitted under the Act the standard rent, the amount of that excess shall, notwithstanding any agreement to the contrary, be irrecoverable from the tenant."

R. B.

HERE AND THERE

BEKONSCOT AGAIN

A FEW weeks ago I made some tentative remarks on the position of the toy village of Bekonscot now that it has been judicially determined that it has attained the honourable estate of coming within the Town and Country Planning Act. I think I registered the same innocent wonder that I would have experienced had it been announced that the model soldiers of the nursery had been brought within the jurisdiction of the War Office, that the navies of the Kensington Gardens Round Pond were among the weighty responsibilities of the Lords of the Admiralty, or that the pedal-propelled motor-cars of the lower age groups fell within the terms of the Transport Act. I had not, I hope, seemed to imply that the Buckinghamshire local authority had acted otherwise than with the most becoming humanity within the limits set by council, file and duty. Further information on the matter has now come into my hands. It is alleged that, owing to the very large crowds that it attracts, the village is a cause of "constant annoyance, discomfort and inconvenience to many inhabitants in the locality" and that it is "entirely wrongly sited in a good residential area" without adequate provision for car parking. An offer has been made by the council to allow time to find a suitable alternative site—either ten years or else the lifetime of the founder and two years thereafter, whichever is the shorter. Within the limits of planning procedure, and with due regard to the annoyed, the discomforted and the inconvenienced, it cannot be lightly said off-hand that the council was acting unconscionably.

ALL IN THE PLAN

BUT the sense of incongruity still obstinately remains and it really lies in the very heart and nature of Planning elevated to the rank of a *mystique*, aspiring to create a social climate in which annoyances, discomforts and inconveniences are automatically eliminated. The trouble is, you see, that there is no science of the accidental and that one cannot plan the unforeseen, and in the wild variety of human nature the more truly human beings are human beings the less you know what they are going to be up to next. Where there's life there must be scope and all the bright ideas are bright precisely

because they have never occurred to anyone before, a sort of spontaneous combustion of the human spirit, and if any planner is going to tell me that to direct just where it is to break out is a simple matter of statutory instruments or regulations under the Act, he knows even less about the Promethean heat than I imagined. Bekonscot in its modest way was just such a bright idea, starting, as such things will, from small beginnings and growing as the inspiration grew. It is not suitable for a residential area? Very well, where is it suitable for? Will we have the satellite towns, where presumably they think of everything, zoning an area for toy villages, perhaps erecting a municipal toy village and endowing it out of the rates? And, then, when all is neatly in order some inconvenient eccentric, obviously living in an unsuitable place, will start something totally different that no one even thought of and the trouble will begin all over again. For instance, I know a village in Sussex (I dare not mention its name for fear of rousing the ravening planner in the soul of the local authority) where deep in the bad old days of Queen Victoria one of the villagers developed a peculiar talent for stuffing small animals, and there was born in him a bright idea, for in his rustic way he was also a genius. Under his hands the little dead kittens and rats, ingeniously dressed in the costumes of the time, assumed an unconventional immortality as figures in period episodes or tableaux; the wedding, the croquet party, the police raid, the death of Cock Robin. Even the expressions were life-like, so that at the kittens' wedding the groom and the best man really had an expression of masculine assurance and the bride and her attendants the smirk of pretty girls. The collection grew till with other natural curiosities it filled a little hall and to this day a constant flow of delighted visitors wanders through for a very modest fee. Now, take the poor man who started it all out of his own muddled, anarchic time and give him social security and a properly planned life: how far would his little idea have got if he had had to get planning authority for his museum? Is it culture? Is it educational? Is it of national importance? Is it suitable for a narrow village street? Can he provide a car park? Has he got his building licences? Wouldn't a more suitable site be a fun-fair at Brighton? All very pertinent, but would it have survived?

UNSOLVED DILEMMA

THE case of the Yorkshire Electricity Board at the Leeds Assizes having ended in a conviction, there could be no question of light or nominal sentences—not after the case of Lord Peel, still fairly fresh in the memory. Incidentally, it vividly illustrated the unsolved dilemma of every mammoth organisation that lives, moves and maintains its being on public money (that is your money and my money). Either the officials are given such a free hand that they needn't think twice over this, that or the other outgoing, in which case you may get flexibility but, human nature being what it is, you'll pay a pretty high price for it, or else the public servants are treated as servants with a strict duty to economise and to account, in which case they'll be so fearful of making a slip that they'll never move or take a decision at all if they can help it. If there is a practical way of slipping uninjured off the horns of that particular dilemma I think most of us would very much like to hear it.

RICHARD ROE.

REVIEWS

Lushington's Law of Affiliation and Bastardy. Seventh Edition. By A. J. CHISLETT, B.Sc., Clerk to the County Justices, Wallington, Surrey. 1951. London: Butterworth and Co. (Publishers), Ltd.; Shaw & Sons, Ltd. 25s. net.

Lushington is an indispensable book to those who are concerned with affiliation proceedings and it has long borne a high reputation. The latest edition fully deserves a like reputation and Mr. Chislett has incorporated all the recent decisions and statutes, including the Maintenance Orders Act, 1950. Each Act is copiously annotated and reference is made, where appropriate, to articles in the legal magazines and to Dominion cases. There are also chapters on the period of gestation and on affiliation agreements.

The index, however, is not as good as it might be. Blood-tests, Northern Ireland, Eire, the Channel Islands and the Isle of Man, for example, are all mentioned in the text but do not appear in the index. Minor points of criticism are the omission of any reference to the doubt cast on *Marshall* v. *Malcolm* (1918), 117 L.T. 752, in *Jones* v. *Evans* [1944] K.B. 582, and the fact that the steps open to a woman who has had a child by an American serviceman are not mentioned.

We are pleased to recommend this book as being accurate, up to date and invaluable to any practitioner whose work takes him into the magistrates' courts.

An interesting suggestion made by the learned editor is that a man who wilfully neglects to pay under an affiliation order may be liable to criminal proceedings under the National Assistance Act, 1948, s. 51, if the child has to receive assistance from public funds as a consequence.

Oke's Magisterial Formulist. Fourteenth Edition. By J. P. WILSON, Solicitor, Clerk to the Justices for the County Borough of Sunderland. 1951. London: Butterworth & Co. (Publishers), Ltd.; Shaw & Sons, Ltd. £5 5s. net.

Mr. Wilson, in the preface to this edition, mentions that the first edition of Oke was published in 1850 and the thirteenth in 1947. Since 1947, many changes in the law, notably those brought about by the Criminal Justice Act, 1948, and the consolidation of the statutes relating to various subjects, such as adoption and shops, have rendered a fresh edition essential. This book retains the high standard of accuracy of the earlier editions and it will be indispensable to magistrates' clerks, prosecuting solicitors and chief officers of police. We have no hesitation in recommending it.

In reviewing a work containing 1057 pages of forms, we feel no shame in admitting that we have not checked each form. We have, however, referred to three recent cases dealing with the forms of summonses and committal for trial. *Simmons* v. *Fowler* (1950), 48 L.G.R. 623, is not mentioned by name, but the requirement laid down by it as to specifying the defective parts of a motor vehicle complained of in proceedings under reg. 67 of the Motor Vehicles (Construction and Use) Regulations, 1947, is mentioned in a note to the appropriate form. *R.* v. *Deputy Recorder of Wolverhampton* [1951] 1 All E.R. 627, which deals with the form of committal for trial of a corporation, is also duly mentioned. On the other hand, *Robertson* v. *Rosenberg* (1951), 115 J.P. 128, which concerns the particulars to be given in a summons for evasion of purchase tax, is not apparently noted at all. It is true, no doubt, that the informations for offences against the Revenue laws are generally drafted in the Government offices and are not of general interest, but we do suggest that the general rules laid down in this case and in *Simmons* v. *Fowler* were worthy of mention in the preface. Mr. Wilson refers to Oke as being a companion volume to Stone and he might do well to borrow from Stone the idea of setting out in the preface to each new edition the decisions affecting the subject-matter of the book since the last edition.

Relics of an Un-Common Attorney. By REGINALD HINE, F.S.A., F.R.Hist.S. Memoir by RICHENDA SCOTT, Ph.D. (Econ.). 1951. London: J. M. Dent & Sons, Ltd. 18s. net.

No one who read with delight those unique memoirs, the "Confessions of an Un-Common Attorney," will dream of allowing this final volume to slip by him unnoticed. It is deeply saddening that this work closes the book of the literary life

of the late Reginald Hine, with his whimsical humour, his just sense of beauty in writing and in building and his unflagging devotion to the history and antiquities of Hertfordshire, his county. Here it is farewell, and we say good-bye to him face to face in a charming prefatory memoir by Richenda Scott. Save for the spirit that animates it, the scheme of this book is, of course, altogether different from that of the "Confessions." This is a collection of seventeen essays, long and short, covering a very wide variety of subjects—enough to provide something for all tastes and interests. Amid such riches of anecdote, research and reflection it is hard to make any selection of personal preference. The social historian might pick on the portrait of a country squire based on an account book of the time of William and Mary. The feminist will instinctively turn to the chapter on notable women of Hitchin. The student of local antiquities will plunge into the village history of Letchworth, Willian and Norton. The religious will find intense interest in the account of Quakerism in Hertfordshire. The literary will delight in "The Art of Reading" and "Biography in Brief," the artistic in the appreciation of the life and work of F. L. Griggs, R.A. The lawyer will naturally avidly devour the "Records of a Country Firm." Such a book needs announcement only; it recommends itself. One should, however, note that at 18s. it is remarkably good value, generously produced with fine binding, good end-papers, 250 most pleasantly printed pages, a score of half-tone illustrations and a dozen more in line. With courage and imagination good value in publishing is still a practical possibility.

BOOKS RECEIVED

Faraday on Rating. Fifth Edition. By Sir ARTHUR S. COMYNS CARR, K.C., Bencher of Gray's Inn, H. D. S. STILES, F.R.I.C.S., Fellow and holder of the Special Rating Diploma of the Royal Institute of Chartered Surveyors, and ANTHONY C. GOODALL, M.C., of the Inner Temple and Western Circuit, Barrister-at-Law. 1951. pp. xl and (with Index) 499. London: The Estates Gazette, Ltd.; Sweet & Maxwell, Ltd. £3 17s. 6d. net.

Police Law. Eleventh Edition. By CECIL C. H. MORIARTY, C.B.E., LL.D., Chief Constable of Birmingham (now retired). 1951. pp. xx and (with Index) 591. London: Butterworth and Co. (Publishers), Ltd. 12s. 6d. net.

Covenants Affecting Land. Supplement up to 22nd September, 1951. By Sir LANCELOT H. ELPHINSTONE, of Lincoln's Inn, Barrister-at-Law. 1951. pp. 16. London: The Solicitors' Law Stationery Society, Ltd. 3s. 6d. net.

Oyez Practice Notes, No. 24: County Court Costs. By J. L. R. ROBINSON. 1951. pp. 69 (with Index). London: The Solicitors' Law Stationery Society, Ltd. 6s. 6d. net.

Advice on Advocacy in the Magistrates' Court (to Solicitors). By F. J. O. CODDINGTON, M.A. (Oxon), LL.D. (Sheff.), Stipendiary Magistrate (1934–50), with a Foreword-Essay by the Rt. Hon. Sir NORMAN BIRKETT, P.C., LL.D. 1951. pp. viii and 22. Chichester: Justice of the Peace, Ltd. 3s. 6d. net.

The Juryman's Handbook. By ALEC BROWN. 1951. pp. 152. London: The Harvill Press. 10s. 6d. net.

The Elements of Income Tax Law. By C. N. BEATTIE, LL.B., of Lincoln's Inn, Barrister-at-Law. 1951. pp. xxxv and (with Index) 190. London: Stevens & Sons, Ltd. 30s. net.

Random Reminiscences. By Sir ARTHUR CUTFORTH, C.B.E., F.C.A., with a Foreword by Sir HAROLD HOWITT, G.B.E., D.S.O., M.C., F.C.A. 1951. pp. 55. London: Gee and Company (Publishers), Ltd. 5s. net.

The Quest of Justice. By the late HAROLD POTTER, LL.D., of Gray's Inn, Barrister-at-Law, Fellow of King's College, London, and Professor of English Law in the University of London. 1951. pp. ix and (with Index) 88. London: Sweet & Maxwell, Ltd. 12s. 6d. net.

The Rational Strength of English Law. By F. H. LAWSON, D.C.L., of Gray's Inn, Barrister-at-Law, Professor of Comparative Law in the University of Oxford. 1951. pp. viii and 147. London: Stevens & Sons, Ltd. 10s. net.

Law Relating to Hospitals and Kindred Institutions. Supplement to 1949 (Second) Edition. By S. R. SPELLER, LL.B., of Lincoln's Inn, Barrister-at-Law, Secretary and Director of Education of the Institute of Hospital Administrators. 1951. pp. viii and (with Index) 87. London: H. K. Lewis & Co., Ltd. 12s. 6d. net.

Justice in Magistrates' Courts. By FRANK J. POWELL, of the Middle Temple, Metropolitan Stipendiary Magistrate, with a Foreword by the Hon. Mr. Justice CASSELS. 1951. pp. xi and (with Index) 212. London: Sir Isaac Pitman & Sons, Ltd. 16s. net.

You and the Law. By A. J. F. WROTTESLEY, M.A. (Oxon), of the Inner Temple and Oxford Circuit, Barrister-at-Law. 1951. pp. (with Index) 208. London: Williams & Norgate, Ltd. 9s. 6d. net.

NOTES OF CASES

COURT OF APPEAL

NUISANCE: NEGLIGENCE: HOLE IN FORECOURT ADJOINING HIGHWAY

Mumford *v.* Naylor

Cohen, Singleton and Birkett, L.JJ. 29th October, 1951

Appeal from Pritchard, J. (*ante*, p. 383).

The defendant owned a shop separated from the public highway by a concrete forecourt. In December, 1949, when it was dark, the plaintiff was walking along the pavement of the highway on the same side as the shops. Having left the pavement and stepped on to the forecourt in order to take a short cut at a road crossing, she caught her foot in a hole in the concrete outside the defendant's shop 18 inches from the pavement, and fell and broke her arm. She claimed damages for nuisance, alternatively, negligence in the breach by the defendant of her duty to the plaintiff as a licensee. Pritchard, J., awarded the plaintiff £450 damages on her claim in negligence, but negatived the claim in nuisance. The defendant appealed.

BIRKETT, L.J., said that there was no ground for disturbing Pritchard, J.'s decision on the claim in nuisance, as to which *Jacobs* v. *London County Council* [1950] A.C. 361; 94 SOL. J. 318 was decisive. As to the claim in negligence, it was agreed that the plaintiff was to be treated as a licensee when she was on the forecourt and there was no dispute that, while a licensee must take the premises as he found them, the licensor was under a duty to give warning to the licensee of any concealed danger which existed upon the premises of which the licensor knew. The defendant did know of this defect, therefore the only issue was whether it was a concealed danger. Pritchard, J., in deciding that the defect was a concealed danger, had referred to the circumstances of the light, of the propinquity of the forecourt and of the "plaintiff's walking along in the ordinary way." But it would appear that the true test whether the defect was a concealed danger was whether it was so from the point of view of the reasonable man, not of the particular person at that particular moment. Pritchard, J., had directed himself that if the plaintiff ought to have seen the depression in the concrete and did not, then she was negligent and could not recover; but that if she did not and ought not to have seen it in the circumstances, then it became a concealed danger. If that was his view, he (the lord justice) thought it wrong. Was this defect in the concrete an obvious danger, if danger there should be? Or was it a concealed danger, if danger there should be? He could not think that there were any elements rendering it a concealed danger as that expression had been defined in the cases. In effect, the judge had said that the defect became a danger because the plaintiff did not look, and he said: "I think it was quite reasonable that she did not look. It was not reasonable to say that she must walk with her eyes glued to the ground." The test for the reasonable person should be: "Was

this an obvious danger, if danger there should be?" In his opinion, it was an obvious danger, and the finding of the trial judge on the issue of negligence could not be supported.

COHEN and SINGLETON, L.JJ., concurred. Appeal allowed.

APPEARANCES: *F. W. Beney*, K.C., and *Martin Jukes* (*Barlow, Lyde & Gilbert*); *Glynn Blackledge*, K.C., and *Eric Myers* (*Darracotts*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LEGAL AID: UNASSISTED PLAINTIFF BECOMING ASSISTED APPELLANT: COSTS

Gough *v.* Higgs (F. & H. F.), Ltd.

Cohen, Singleton and Birkett, L.JJ. 29th October, 1951

Question of costs arising on an appeal from Croom-Johnson, J.

The plaintiff's appeal from a decision of Croom-Johnson, J., in favour of the defendants was dismissed, they having been granted the costs of the action. The plaintiff was not an assisted person in the action but two months after he had given notice of appeal he became an assisted person. At the date of the appeal he had not paid the costs of the action. His disposable income was under £156 a year and his disposable capital was nil. On the dismissal of the appeal, which does not call for report, the defendants applied for their costs.

COHEN, L.J., giving judgment on the question of costs, said that a difficult question arose. Under reg. 17 of the Legal Aid (General) Regulations, 1950, as drafted, the burden of determining the amount which an assisted person should be liable to pay, whether by instalments or otherwise, fell on the Court of Appeal, who had no power to refer the question to a master or any other authority to determine on proper evidence. The matter invariably came before the court with, at the most, a statement of what had been done, as regards contribution to costs, by the public assistance authority. The unsatisfactory nature of that as a basis for the court's award was well illustrated by the present case, where the certificate of the public assistance authority stated that the plaintiff's disposable income was under £156, and his disposable capital was nil. Thus the court did not even know what his income actually was at the time when the matter was before the public assistance authority. In fact the plaintiff was at that time out of employment; but he was not present in court on the appeal and nobody was able to say what his situation now was. In these circumstances the court must proceed on the basis that he was unemployed at the last date for which they had any definite information, and that he had no disposable income. In those circumstances they could make no order in favour of the unfortunate defendants for their costs after the time when the plaintiff became an assisted person. It seemed likely that they would have to bear the burden of two sets of costs without any redress. It was worthy of consideration by the appropriate authority whether the regulations should not be altered so as to enable the Court of Appeal, who had no real machinery for dealing with such a matter, to refer to some other tribunal the question of the amount of the costs that should be borne by an assisted person and whether they should be paid by instalments or otherwise. This question could then be investigated on proper evidence. In the meantime solicitors who appeared for assisted persons should recognise that it was their duty to have available for the information of the Court of Appeal the latest possible information, in the event of their failing in the appeal, as to the financial position of the party whom they represented. The appeal would be dismissed. The plaintiff would pay the costs, if any, to be taxed, up to the date of his becoming an assisted person. No order as to costs after that date except that the costs of the assisted person should be taxed as between solicitor and client in the usual way.

SINGLETON and BIRKETT, L.JJ., agreed.

Appeal dismissed.

APPEARANCES: *Glynn Blackledge*, K.C., and *Eric Myers* (*Darracotts*); *John Thompson* (*Mackrell, Maton & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

IRISH LETTERS OF ADMINISTRATION: RESEALING IN ENGLAND NOT RETROSPECTIVE

Burns *v.* Campbell

Denning and Hodson, L.JJ. 29th October, 1951

Appeal from Finnemore, J.

The plaintiff's husband, who was domiciled in Northern Ireland, died in England in 1950. In January, 1951, she took out letters of administration of her husband's estate in Northern Ireland, and thereupon issued a writ against the defendant, a doctor, whom she believed to have occasioned her husband's death by his negligence. In the action she claimed as "administratrix" of her husband's estate under the Law Reform Act of 1934, as well as claiming under the Fatal Accidents Acts. After the issue of the writ she obtained a grant of administration in England, when the Irish grant was resealed in accordance with s. 169 of the Supreme Court of Judicature (Consolidation) Act, 1925. Finnemore, J., reversing the decision of a master, set aside the writ and stayed all proceedings on the ground that at the date of the institution of the action the plaintiff had not a grant of administration in England, so that the action was not properly constituted and the proceedings were a nullity. The plaintiff now appealed, contending that the resealing in England related back to the grant of administration in Northern Ireland, and that therefore, at the date of the issue of the writ, she was entitled to claim as administratrix. By s. 169 of the Act of 1925: "If probate or letters of administration granted . . . in Northern Ireland is or are produced to the High Court . . . the grant shall . . . be sealed with the seal of the principal probate registry, and shall have the like effect in England as if it had been originally made by the High Court."

DENNING, L.J., said that he did not think that the word "originally" in s. 169 gave the resealing a retrospective effect: the word was used to denote the way in which the resealing operated and not the date from which it operated. It meant that the resealing had the same effect as an original grant; but that it had that effect only from the date of resealing was shown by the words "shall have," in the future tense. That view was confirmed by the fact that, as between England and Scotland, the resealing only operated *in futuro* and not retrospectively. The appeal failed. The widow had thus lost her claim altogether under the Fatal Accidents Acts, because more than twelve months had expired since the husband's death, but there was nothing to prevent her bringing a fresh action as administratrix under the Law Reform Act.

HODSON, L.J., concurred.

Appeal dismissed.

APPEARANCES: *R. C. Vaughan*, K.C., and *Conolly Gage* (*Martyns and Gane*, for *Hamill Davison & Co.*, Belfast); *Charles Russell*, K.C., and *R. S. Armitage* (*Bulcraig & Davis*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

COMPANY: DISSOLUTION: JURISDICTION TO DECLARE VOID

***In re* Belmont & Company, Ltd.**

Wynn Parry, J. 15th October, 1951

Motion.

A company was struck off the register as defunct and was dissolved by virtue of the Companies Act, 1948, s. 353. At the date of the dissolution the Inland Revenue Commissioners had made various assessments to tax on the company, including excess profits tax, income tax and profits tax, and the company had appealed therefrom. The commissioners were unable to proceed with the appeals unless the dissolution of the company was declared void. They brought a motion under s. 352 (1) of the Act asking that the dissolution be declared void.

WYNN PARRY, J., said that the motion raised a question of jurisdiction. The necessity for the commissioners to proceed under s. 352 was that at the date of the dissolution they had assessed the company in various sums for taxes; but in each case the assessment was under appeal, so that it was at least doubtful whether the commissioners were creditors of the company so as to be entitled to proceed by petition under s. 353 (6) for an order restoring the name of the company to the register. Application under that subsection had to be made by the company or a member or creditor of the company. Section 352 (1) was a section *prima facie* providing for all cases of dissolution under the Act; the language of that subsection was clearly wide enough to confer on the court jurisdiction to make the order for which the commissioners asked. There was not to be found in s. 353 sufficient ground for saying that the jurisdiction of the court under s. 352 was circumscribed; s. 352 was unaffected by s. 353. The effect of declaring a dissolution void under s. 352 where a company had been struck off the register under s. 353 was to bring about the same position as existed before dissolution. There was inherent jurisdiction in

the court to order the restoration of the company's name to the register. The dissolution of the company would be declared void.

APPEARANCES: *M. Berkeley* (*Solicitor of Inland Revenue*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: PRINTED FORM: TWO RESIDUARY GIFTS: GIFT TO CHURCH

***In re* Gare; Filmer *v.* Carter**

Harman, J. 19th October, 1951

Adjourned summons.

On 14th November, 1940, the testator executed a will which consisted of a printed form completed by him in his own writing. After having directed some specific legacies, he wrote: "The residue of my estate to be divided equally between St. Peter's Church, Staines, and Oxford University. My executors may postpone realization of any assets until necessary for the final distribution of the estate." At the end of the will there were the printed words: "I devise and bequeath all my real and personal estate not hereby otherwise disposed of unto," to which the testator added in his own hand-writing: "My executors to deal with at their discretion." The testator died on 31st March, 1950, and the court was asked, *inter alia*, to determine which of the two residuary gifts was valid, and if it was the former, who could give a valid receipt for St. Peter's Church, Staines.

HARMAN, J., said the rule that where in a will there were two inconsistent phrases, bequests or devises, the latter was to be preferred to the former, no doubt existed but it was a counsel of despair. There was no inconsistency in the present case. The testator gave the residue of his estate to two corporate beneficiaries. Then, finding in the form a line about "the estate not hereby otherwise disposed of," he had said to himself, "My executors are to have that." The court must see what it was that was "not hereby disposed of." If the first gift was good, nothing was "not hereby otherwise disposed of," and there remained nothing on which the ultimate gift could operate. On the other hand, should the gift to St. Peter's Church or Oxford University fail for some reason or to some extent, the ultimate gift would no doubt serve a useful purpose. He (the learned judge) would hold unhesitatingly that the first gift, so far as effective, carried the whole estate and that the second gift, to the executors, was inoperative. The first gift, in so far as half of it went to St. Peter's Church, Staines, was a perfectly good charitable gift. It was a gift to the Parochial Church Council—a corporate body appointed by the Parochial Church Councils Measure, 1921—but limited, in the use which they might make of the money, to church purposes connected with the services of the Church and it could not be used for parochial purposes which might be other than religious in their nature.

APPEARANCES: *R. W. Goff*; *M. J. Albery* (*Wake, Wild and Boult*); *Harold Lightman* (*R. H. Behrend, Kendall, Price and Francis*); *Denys Buckley* (*Treasury Solicitor*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

WILL: SPECIFIC LEGACY: COST OF RECOVERY: WHETHER BORNE BY ESTATE OR LEGATEE

***In re* Fitzpatrick; Bennett *v.* Bennett**

Harman, J. 25th October, 1951

Adjourned summons.

A testatrix who was domiciled in England, but resided for several years before her death in Monte Carlo, bequeathed to her sister "all my possessions in the principality of Monaco." The testatrix died in 1944, and two of her executors went to Monaco and arranged for the possessions of the testatrix to be shipped to this country and to be delivered to the specific legatee. The property in question consisted of household goods, furniture, jewellery and cash in the bank, and the executors incurred expenses amounting to some £1,000 in connection with the transport of the goods and insurance. The court was asked to determine whether these expenses ought to be borne by the specific legatee or the testatrix's residuary estate.

HARMAN, J., said that it appeared from the decision of the Court of Appeal in *In re Scott* [1915] 1 Ch. 592, which was followed in *In re Grosvenor* [1916] 2 Ch. 375, that an executor was under no duty to incur the costs of bringing chattels from a foreign country in order to deliver them to the specific legatee. The executors were entitled to be indemnified for the expenses they had incurred at the request of the specific legatee. *In re Hewett* [1922] W.N. 366 not followed.

APPEARANCES: *J. A. Plowman* (*Bircham & Co.*); *H. E. Francis* (*Callingham, Griffith & Bate*); *D. H. McMullen* (*Boyce, Evans & Sheppard*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

CONSTRUCTION SUMMONS: PARTIES: COSTS PRACTICE

***In re* Amory**

Roxburgh, J. 25th October, 1951

ROXBURGH, J., in the course of his judgment, said that the question of costs being always in the discretion of the court no defendant beneficiary was entitled as of right to have his costs paid out of the estate. Where the question to be argued was purely one of construction, especially when it was one involving a legacy of a small amount, the correct practice was to make only one person a defendant to argue against the disposition of the legacy. The practice under which unnecessary parties were added and unnecessary briefs were delivered when one firm of solicitors represented a number of parties in the same interest was deleterious. Although all persons interested had a right to be heard as defendants they did not by thus appearing become entitled as of right to any costs out of the estate. It did not matter that the court might not think fit to make a representation order, as the plaintiff trustees would be sufficiently protected by the order of the court.

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

TRADE UNIONS: UNOFFICIAL STRIKE: EX GRATIA PAYMENT

Astley and Others *v.* Electrical Trade Union

Wynn Parry, J. 30th October, 1951

Action.

On 13th February, 1951, an unofficial strike was started by members of the defendant union employed by the London Electricity Board. The plaintiffs, who had refused to take part in the strike, asked, *inter alia*, for a declaration that payments from the funds of the union to persons who participated in or promoted the strike were unlawful and *ultra vires*.

WYNN PARRY, J., said that the strike was not, and could not be, authorised under the rules of the union. During the course of the strike, efforts were made to induce the plaintiffs, who belonged to various branches of the union and were working on various sites, to join the strike, but without success. Notwithstanding that the strike was not, and could not be, authorised by the executive council under the rules, the executive council authorised what were called *ex gratia* payments to those engaged in the unofficial strike. Those payments amounted to approximately £50,000. The claim that the strike was illegal was based on the Conditions of Employment and National Arbitration Order, 1940 (as amended), which was then in force. The plaintiffs claimed that the so-called *ex gratia* payments were improperly made. The defendants disputed this. The question was purely one of construction of the rules of the union in the light of Sched. I to the Trade Union Act, 1871. The argument for the defendants was that r. 16, which contained a detailed set of provisions dealing with the circumstances in which an authorised strike could be called and the strike benefits which might be paid out, was not exhaustive as regards strikes but limited to strikes of a particular character. Rule 1 defined, among the objects of the union, assistance to members in sickness and distress, and it was said that a member who had ceased work—even through his own fault—was in distress and the executive council might vote, *ex gratia*, whatever sums they thought fit. He (his lordship) could not accept that argument; it rested almost wholly on the presence of the word "distress" in r. 1. Rule 16 had to be regarded as an exhaustive code on the matter of strikes. The rules had to be considered as they stood, and if this decision of the court was contrary to the general opinion of the members their remedy in the future lay in altering the rules. The plaintiffs were entitled to a declaration that it was *ultra vires* the union for any payment to be made out of their funds in furtherance of a strike not authorised under r. 16 of the rules of the union.

APPEARANCES: *Denis Gerrard*, K.C., and *W. T. Wells* (*Sydney Morse & Co.*); *Kenneth Diplock*, K.C., and *Ralph Millner* (*Gaster and Turner*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

COMPANIES: WINDING UP: STATUTE-BARRED DEBT

***In re* Art Reproduction Company, Ltd.**

Wynn Parry, J. 5th November, 1951

Motion.

In 1950 the company went into voluntary liquidation. Its assets were sufficient to pay its debts, and there was available for distribution to the shareholders a surplus which was less than the nominal amount of the shares. A creditor sought to prove two claims which were statute-barred, but the shareholders objected. The liquidator rejected them and, on appeal to the registrar, the decision of the liquidator was upheld. The creditor moved, by way of appeal from the registrar, to allow his claims.

WYNN PARRY, J., after considering *In re Fleetwood and District Electric Light and Power Syndicate, Ltd.* [1915] 1 Ch. 486, said that the correct approach to the problem was to examine the provisions of the Companies Act, 1948, for guidance. Sections 257 (1) and 302 both referred to "liabilities," and there was no context to justify placing different meanings on the words in the two sections. Section 98 of the Act of 1862, which corresponded to s. 257, had been judicially considered in *In re General Rolling Stock Co.* (1872), L.R. 7 Ch. 646, in which James and Mellish, L.JJ., had stated that the liabilities within the section were "all the liabilities of the company existing at the time when the winding-up order was made." An argument based on the language of ss. 316 and 317 of the 1948 Act, that the bankruptcy rules applied only in cases of insolvency, was in no way decisive. The statement in Buckley on the Companies Acts, 12th ed., at p. 634, that a barred debt, "*semble*, cannot even in a solvent voluntary liquidation properly be paid against the wishes of the contributories," was correct, provided that the last passage read "unless the contributories consent." It would be quite illogical to have one rule in a compulsory winding up and another in a voluntary winding up. The appeal had, therefore, to be dismissed.

APPEARANCES: *F. Bower Alcock* (*Doyle, Devonshire & Co.*); *P. J. Sykes* (*E. F. Turner & Sons*).

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

VENDOR AND PURCHASER: ALLEGED WARRANTY AS TO RENTS

Schlisselmann *v.* Rubin

Slade, J. 8th October, 1951

Action.

The plaintiff bought from the defendant the lease of premises "subject to and with the benefit of" certain weekly tenancies of which it was stated that they "are let" at figures which in fact were in excess of the maximum (standard) rent legally recoverable. The purchaser brought an action against the vendor claiming damages in respect of the alleged warranty as to rents.

SLADE, J., said that it was argued either that the contract meant on its true construction that the rents specified were, as pleaded, "lawfully recoverable rents," or that he ought to imply a term that those words necessarily implied that the premises were let at rents which could be lawfully recoverable. He was unable either to hold that the words "are let" meant that the premises were let at the figures specified as lawfully recoverable rents or that the rents specified should be recoverable rents. Even if he were able to do so—and he was concerned solely with the written contract and its construction by reference only to the words of the contract itself and the circumstances in which it was made, excluding all the antecedent negotiations—still, excluding fraud, the action would not succeed unless that meaning and the representation thereby conveyed amounted to an implied warranty in law that the rents specified were lawfully recoverable rents, for no action would lie for damages for an innocent misrepresentation. Having referred to *Terrene, Ltd.* v. *Nelson* (1937), 53 T.L.R. 963, at pp. 965 and 966, and *Luxor* (*Eastbourne*), *Ltd.* v. *Cooper* [1941] A.C. 108, at p. 137, his lordship said that he asked himself not whether it would have been reasonable to express what was the standard rent or recoverable rent of the two flats in addition to, or in substitution for, the rents at which they were actually let, but whether it was so necessary to do so, to give efficacy to the terms of the contract itself, that he ought to imply, from the mere use of the words that the premises "are let" at such and such a rent, that those rents, at which they were *de facto* let, were the recoverable rents for the premises. He was quite unable to do so. There was nothing unlawful in letting controlled premises at a rent in excess of the legally recoverable rent. There might well be a sale of a lease subject to a tenancy where rent in excess of the permitted rent had been paid for years by parties who would not think of taking advantage of their strict legal rights and going behind a bargain. Judgment for the defendant.

APPEARANCES: *M. Levene* (*Hart-Leverton & Co.*); *J. Cohen* (*Stone & Stone*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

ATTEMPTED MURDER: INTENTION TO CAUSE GRIEVOUS BODILY HARM

R. *v.* Whybrow

Lord Goddard, C.J., Hilbery, Finnemore, Slade and Devlin, JJ. 22nd October, 1951

Appeal against conviction.

The appellant was convicted of attempting to murder his wife by administering an electric shock to her while she was in her bath, and sentenced to ten years' imprisonment. He produced the shock by connecting the electric mains to the soap dish. The ground of the appeal was that the trial judge had misdirected the jury by telling them that they must find the appellant guilty of attempted murder if they were of the opinion that his intention was to cause the death of his wife or to inflict grievous bodily harm on her. The prosecution conceded, on the appeal, that those words constituted a misdirection, but contended that by virtue of the proviso to s. 4 (1) of the Criminal Appeal Act, 1906, the court should dismiss the appeal on the ground that no substantial miscarriage of justice had actually occurred.

LORD GODDARD, C.J., giving the judgment of the court, said that the judge, in charging the jury, had confused in his mind the direction to be given to a jury in a murder case with that on a charge of attempted murder. When a person was charged with the murder of another, the charge to the jury was that if the victim had died as the result of an attack which was meant to kill or cause him grievous bodily harm, his assailant was guilty of murder, as the intention to cause grievous bodily harm satisfied the requirement in murder that there must be malice aforethought. But where the indictment alleged attempted murder, the intent to murder became the principal ingredient of the crime. The judge had, therefore, misdirected the jury in that respect, although later on in his summing up he had put the issue in a nutshell when he told the jury that they might consider the issue to be whether the appellant had inserted the electrical apparatus with intent to kill his wife or whether he did not insert it at all. The jury's verdict clearly showed that they regarded the appellant's action as deliberate and well calculated. In *Stirland* v. *D.P.P.* [1944] A.C. 315, at p. 321, Viscount Simon, after considering a passage from Viscount Sankey's opinion in *Woolmington* v. *D.P.P.* [1935] A.C. 462, at p. 483, said that the proviso should be applied where a reasonable jury, after being properly directed, would, on the evidence properly admissible, without doubt have convicted. After mature deliberation, the court had decided that there had been no substantial miscarriage of justice, and were unanimous in saying that this was a proper case for applying the proviso. Appeal dismissed.

APPEARANCES: *Derek Curtis-Bennett*, K.C., and *Gordon Hardy* (*Drysdale, Lamb & Jackson*); *Melford Stevenson*, K.C., and *Anthony Harmsworth* (*D.P.P.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

MR. W. BENTLEY

Mr. William Bentley, solicitor, of Pontefract, Coroner for Pontefract and district since 1927, died on 16th November. He was admitted in 1907 and was president of the Coroners' Society of England and Wales in 1947.

MR. J. S. HARRISON

Mr. John Stubbs Harrison, solicitor, of Bristol, died on 1st November, aged 68. He was admitted in 1908 and, except for a period of service in the first World War as a captain in the R.F.A. (T.), practised all his life in Bristol.

SURVEY OF THE WEEK

HOUSE OF LORDS

A. Progress of Bills

Read First Time :—

Spring Traps Bill [H.L.] [13th November.

To prohibit the manufacture, sale or exposure for sale, or use, or having in possession or custody of gin traps and to regulate the setting of spring traps in the open.

B. Debates

On a motion that the House, in discharge of its constitutional duty to act as the ultimate appellate tribunal in appeals from England, Scotland, and Northern Ireland, should appoint a Committee to include all lords qualified under s. 5 of the Appellate Jurisdiction Act, 1876, to hear such appeals as might be referred to them, the Committee to have leave to report to the House from time to time, the Lord Chancellor said it was the House and not the Committee which was the final court of appeal. Nevertheless, for many years convention had demanded that only those lords who were particularly qualified should sit to hear and determine appeals. Those who sat for each case were chosen from time to time by the Lord Chancellor from among the Lords of Appeal in Ordinary and other persons qualified by holding or having held high judicial office. But this did not mean that all lords were not entitled to come and hear the appeals—though convention again demanded that they should, if they came, take no part in the debate. If one did so he knew of no method by which he could be stopped other than by the traditional method of moving : "That the noble lord be no longer heard."

The experience of centuries had shown that it was convenient alike for litigants, counsel, and for the administration of justice if the House sat for judicial business *de die in diem* at the hours of from 10.30 a.m. to 4 p.m. This had been possible because the House had normally not sat for its public business until 4 p.m. Since the war, however, it had been found necessary to sit often at 2.30 p.m. ; this made it impossible for judicial business to be dealt with in the House in the usual way, and hence the need for a Committee to sit apart from the House. It was unfortunate that this arrangement deprived the House of the valuable contributions of those law lords sitting on the Committee.

Viscount Jowitt said that in addition to the difficulties already mentioned there was the fact that the Lord Chancellor was nowadays so often called away to Cabinet meetings, making it impossible for him to preside over judicial work. This was a great misfortune because one of the Lord Chancellor's most important tasks was to appoint the judges, and the best way of making certain that one appointed the right people was by hearing them argue before one : then he could form his own opinions and need not rely on anyone else's, however good it might be. He agreed, however, that for the present the separate sittings of the Committee to hear appeals were inevitable.

[13th November.

HOUSE OF COMMONS

A. Progress of Bills

Read First Time :—

Home Guard Bill [H.C.] [14th November.

To establish the Home Guard and for purposes connected therewith.

Hydro-Electric Development (Scotland) Bill [H.C.] [15th November.

To extend the borrowing powers of the North of Scotland Hydro-Electric Board.

Japanese Treaty of Peace Bill [H.C.] [15th November.

To provide for carrying into effect the Treaty of Peace with Japan and Protocol thereto.

Judicial Offices (Salaries, etc.) Bill [H.C.] [13th November.

To make further provision as to the sums payable by way of salary, pension or allowances in respect of certain judicial offices.

Public Works Loans Bill [H.C.] [14th November.

To grant money for the purpose of certain local loans out of the Local Loans Fund.

Read Second Time :—

Border Rivers (Prevention of Pollution) Bill [H.C.] [15th November.

Pneumoconiosis and Byssinosis Benefit Bill [H.C.] [16th November.

Read Third Time :—

Expiring Laws Continuance Bill [H.C.] [15th November.

B. Questions

Law of Intestacy

The Attorney-General stated that the Lord Chancellor had under consideration the question of acceptance of the recommendations of the Committee on the Law of Intestacy.. [12th November

Copyright Committee

Mr. H. Strauss stated that the Copyright Committee had just completed the taking of oral evidence in public, the first stage of its task. The Chairman of the Committee, the Marquess of Reading, had resigned on his appointment as Parliamentary Under-Secretary of State for Foreign Affairs and Sir Henry Gregory, K.C.M.G., C.B., had been appointed in his place. The report of the Committee was not expected to be available for some months. [13th November.

Tenancies (Security)

Mr. H. Macmillan said that the Government did not propose to take any action, following the recent decision of the Divisional Court in the case of *R.* v. *Folkestone Rent Tribunal* (*ante*, p. 730) to enable rent tribunals to grant security of tenure to tenants who had failed or been unable to refer their cases to the rent tribunal before the service of a notice to quit upon them by their landlords. [13th November.

Local Authority Grants

Mr. H. Macmillan stated that since 1945 the number of local authorities which had made advances under the Small Dwellings Acquisition Acts and the Housing Acts to enable people to buy their own houses was 921 ; this included 19 county councils. The amount advanced up to 31st March, 1951, was £40,078,174 for 47,806 houses. [13th November.

Rent Restrictions Acts

Mr. Marples stated that the Government would review the Rent Restrictions Acts in due course. [14th November.

Eyes (Bequeathal)

Mr. Crookshank stated that he would consider the question of amending the Anatomy Acts so as to make it easier for persons to bequeath their eyes to be used for the benefit of blind persons. [15th November.

Dispossessed Farmers

Sir Thomas Dugdale stated that on 1st October, 1951, 1,584 farmers were under supervision for failure to comply with the rules of good husbandry. Orders to terminate the occupation or interest of 68 farmers on the grounds of bad husbandry became effective during the twelve months ended 30th September, 1951. [15th November.

Cruelty to Children

Sir David Maxwell-Fyfe said it was for those responsible for instituting proceedings to consider in any particular case whether they should, instead of applying to the magistrates' court for summary trial, invite the justices to consider the question of committing for trial. It was also for the prosecuting authority to consider, in cases where injuries were deliberately inflicted, whether a charge should not be brought under the Offences against the Person Act, 1861, which provided even more severe penalties. [15th November.

Driving Offences (Drunkenness)

Sir David Maxwell-Fyfe said he had no powers to deal more effectively with these offences. It was entirely for the courts in all the circumstances to assess what was the appropriate penalty in any particular case, and it would not be proper for him to offer them guidance in the matter. The maximum penalties were heavy and the courts had an ample reserve of power to deal with the most serious cases. He had no doubt that courts would note that the Lord Chief Justice in a recent case in the Divisional Court had taken the opportunity of calling attention to the fact that driving under the influence of drink was one of the worst offences which it was possible to commit.

[15th November.

STATUTORY INSTRUMENTS

Birmingham-Great Yarmouth Trunk Road (Guyhirne Bridge Diversion) (Revocation) Order, 1951. (S.I. 1951 No. 1927.)
Coal Distribution (Restriction) (Amendment No. 2) Direction, 1951. (S.I. 1951 No. 1922.)
Coal Industry Nationalisation (Interim Income) (Rates of Interest) Order, 1951. (S.I. 1951 No. 1932.)
County of East Sussex (Electoral Divisions) (No. 3) Order, 1951. (S.I. 1951 No. 1929.)
County of York East Riding (Electoral Divisions) Order, 1951. (S.I. 1951 No. 1919.)
Import Duties (Exemptions) (No. 15) Order, 1951. (S.I. 1951 No. 1923.)
Ipswich-Newmarket-Cambridge-St. Neots-Bedford-Northampton-Weedon Trunk Road (Little Houghton By-Pass) (Amendment) Order, 1951. (S.I. 1951 No. 1928.)
London Traffic (Prescribed Routes) (No. 28) Regulations, 1951. (S.I. 1951 No. 1909.)
London Traffic (Prescribed Routes) (No. 29) Regulations, 1951. (S.I. 1951 No. 1925.)
Meat (Rationing) (Amendment No. 9) Order, 1951. (S.I. 1951 No. 1921.)
Medical Disciplinary Committee (Legal Assessor) Rules, 1951. (S.I. 1951 No. 1918.)
These rules provide for the functions to be exercised by the Legal Assessor appointed under the Medical Act, 1950, in sitting with this Committee of the General Medical Council. He is to advise on questions of law referred to him by the Committee and, on his own initiative, to advise the Committee forthwith of any irregularity in their proceedings and of the possibility of any mistake of law being made. The advice must be given before the parties, except when the Committee have begun to deliberate their findings, when it must be communicated to the parties as soon as may be. If the advice tendered is refused, a record must be kept of the refusal and of the reasons therefor.
Retention of Cable, Main and Pipe Over and Under Highway (Glamorganshire) (No. 1) Order, 1951. (S.I. 1951 No. 1914.)
Retention of Pipes Under Highway (Kent) (No. 3) Order, 1951. (S.I. 1951 No. 1912.)
Retention of Railway Across Highway (Nottinghamshire) (No. 4) Order, 1951. (S.I. 1951 No. 1911.)
Seed Potatoes Order, 1951. (S.I. 1951 No. 1926.)
Stopping up of Highways (Pembrokeshire) (No. 1) Order, 1951. (S.I. 1951 No. 1915.)
Stopping up of Highways (Shropshire) (No. 2) Order, 1951. (S.I. 1951 No. 1913.)
Draft **Teachers' Superannuation** (Royal Air Force) Varying Scheme, 1951.
Draft Teachers' Superannuation (Royal Naval College, Dartmouth) Scheme, 1951.
Utility Apparel (Maximum Prices and Charges) (Amendment No. 8) Order, 1951. (S.I. 1951 No. 1910.)

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 102-103 Fetter Lane, E.C.4, and contain the name and address of the subscriber, and a stamped addressed envelope.

Stamp Duty—Conveyance—Alleged Inadequate Consideration—Adjudication

Q. We are acting for the vendor of a property and the purchaser's solicitors have asked us to submit the vendor's conveyance to the Inland Revenue for adjudication. The abstract of title shows a conveyance of the property to the vendor's father and mother in 1939, and the next document appearing on the abstract is a conveyance from the surviving parent to the vendor, the purchase money being stated to be the same as in the 1939 conveyance. The requisition pointed out that, as the consideration in 1949 was the same as that in 1939 and the conveyance appeared to be made in favour of a relative, the stamp duty must be adjudicated under the provisions of s. 74 (5) of the Finance (1909–10) Act, 1910. In replying, we referred to *Re Weir and Pitt's Contract* (1911), 55 Sol. J. 536, and the purchaser's solicitors have now quoted the case of *Conybear* v. *British Briquettes, Ltd.* [1937] 4 All E.R. 191. Do you consider that the stamp duty must be adjudicated ?

A. In our opinion it is not necessary for the stamp duty to be adjudicated. We have considered the two cases referred to in the question, and in our view they deal with two entirely different points. In the earlier case, as in that now under consideration, a conveyance had been stamped *ad valorem* on the amount of the consideration, which, it was contended, did not represent the full value of the property, and it was held that the conveyance was not a voluntary disposition requiring adjudication under s. 74 (5) of the Finance (1909–10) Act, 1910. In *Conybear's* case, on the other hand, the transfers (of shares) had been stamped *ad valorem* on the consideration stated in each. It was in evidence that no consideration at all had passed between transferees and transferors and, on that ground, the court held the transfers to be voluntary dispositions which required to be adjudicated under s. 74 (5) of the 1910 Act. In the present case, we think that, in view of the relationship between the parties to the conveyance of 1949, the purchaser's solicitors are entitled to ask and have answered a requisition enquiring if the consideration to the amount stated in the conveyance really passed, but that if this requisition is answered in the affirmative no adjudication stamp is necessary.

Intestacy—Administrator Also Heir-at-Law—Dies Intestate without Vesting Legal Estate in Himself Beneficially

Q. A died on 5th November, 1920, owning two dwelling-houses. Letters of administration to her estate were granted to B, the heir-at-law, on 5th January, 1925. B did nothing further and he himself died on 8th March, 1950. Letters of administration to his estate were granted to C on 31st August, 1950. Did the legal estate in the dwelling-houses vest in B on 1st January, 1926, by virtue of the transitional provisions, and can C now vest the property, or is it necessary to take out a grant *de bonis non* to A's estate ?

A. The provisions of Pt. II of Sched. I to the Law of Property Act, 1925, relating to the vesting of legal estates were, in *St. Germans* v. *Barker* [1936] W.N. 106, held to require that the legal estate needed to be transferred from one person to another before they could operate, and we are accordingly of opinion that these provisions did not have the effect of vesting the legal estate in B beneficially. Before 1926 an administrator had no power of assent, and under the Land Transfer Act, 1897, the procedure was for an administrator to convey the legal estate to the heir-at-law and, where the administrator and the heir were the same person, he executed a deed poll. Section 36 of the Administration of Estates Act, 1925, which gave an administrator the power to assent, is not confined to deaths after 1925, and it was accordingly open to B to assent in his own favour. In the county court decision of *Harris* v. *Harris* [1942] L.J.N.C.C.R. 119, it was held not only that an assent by a person who was beneficially entitled in favour of himself need not be in writing and could be implied from conduct, but that if an implied assent had been made the administrator *de bonis non* had no title. There are also *dicta* in *Re Hodge* [1940] Ch. 260 which indicate that an assent by a personal representative in his own favour is not required to be in writing. From these decisions it is possible to suggest that B was beneficially entitled to the legal estate when he died in 1950 notwithstanding the absence of a written assent or deed poll, and that accordingly the legal estate is now vested in C as his personal representative. We nevertheless feel that a grant *de bonis non* to A's estate would be productive of a more generally acceptable title to the legal estate.

Private Limited Company—1929 Table A—Voting Powers of Directors—Election of Chairman

Q. X company is a private limited company, formed to take over firms previously separately owned by A and B. In the new company A took 500 shares and B took 500 shares, they being the only shareholders, and A and B were appointed directors. Table A of the Companies Act, 1929, as set out in the Act, applies to the company. Subsequently B's brothers C and D took a small proportion of B's shares and also were appointed directors, so that the shareholding is now as follows: A, 500 shares; B, 400 shares; C and D, 50 shares each; so that so far as shares go A has an equal controlling interest with that of B, C and D together. We are asked to advise A.

The problem is whether B, C and D, though they have equal shares with A, by virtue of their numerical superiority as directors can virtually oust A from any share in the control of the business. Article 67 states that the business of the company shall be managed by the directors. Article 84 refers to election of a chairman. The word "elect" seems to imply that a vote will be taken and that a director has as many votes as he holds shares, which would protect A's interests. But the article goes on to say that in default of election the directors may *choose* one of their members, and in such a case B, C and D, acting in concert, would be able to elect one of themselves as chairman. Having done so they would by applying art. 81 be able to exclude A, because the chairman by this article is given a casting vote. We note that art. 85 does not say that a chairman *must* be appointed. If in this case no chairman is elected, the result will be that (provided B, C and D vote together) in case of disagreement there would be 500 votes for and 500 against, which would defeat the project mooted, and only those decisions with which A was in agreement could be effective, which would be a satisfactory solution so far as our client is concerned. On the other hand, if B, C and D wished to choose a chairman of the meeting and A did not, could the majority in number enforce their will upon the minority in number, though with equality of votes?

A. It is necessary to distinguish between voting at meetings of the company in general meeting, and at meetings of directors, although the same persons are present in each case. So far as meetings of directors are concerned there is no doubt that under cl. 84 of the 1929 Table A the majority in number of directors may elect a chairman or choose one of their number to take the chair at a specific meeting. In this case, however, the ability of B, C and D to elect a chairman, and the latter's casting vote, appear to be irrelevant since voting at board meetings is always by majority in number and A can, therefore, be outvoted without calling on the chairman's casting vote.

The position is different as regards general meetings of the company. Section 137 of the Companies Act, 1948, confers a right to demand a poll, whereupon voting power is proportional to shares held (see ss. 134 (*e*) and 138 of the 1948 Act, and cl. 54 of the 1929 Table A). If, as directors, B, C and D have elected a chairman, he will automatically take the chair at a general meeting (cl. 47) and will have a casting vote in the event of an equality of votes on a poll (cl. 52). If, on the other hand, no chairman of the board has been elected A can at a general meeting demand a poll on the question of election of a chairman (cl. 53), a course which might result in deadlock. Even if the articles permit, it is presumably not open to A to follow the same course as B by transferring some of his shares to other persons, since if B is hostile their appointment as directors under cl. 77 could not be secured. Failing this, the only protections available to A are the power to wind up in case of deadlock (i.e., a fifty-fifty division of votes) on a matter of vital import to the company, under the "just and equitable" clause (*Re Yenidje Tobacco Co.* [1916] 2 Ch. 426), and the further power in such a case to apply for relief on the ground of oppressive conduct of the company's affairs under s. 210 of the Companies Act, 1948.

These powers may well be allowed to remain in the background unless and until it becomes absolutely necessary to threaten to use them. There are many companies in which the balance of power on the board has been upset without evil results, and it is not always necessary to anticipate trouble by taking active steps.

NOTES AND NEWS

Honours and Appointments

The King has been pleased to grant to The Right Honourable Sir LIONEL LEONARD COHEN the dignity of a Baron for life by the style and title of Baron Cohen of Walmer in the County of Kent.

The King has approved that a knighthood be conferred upon Mr. LIONEL FREDERICK HEALD, K.C., M.P., upon his appointment as Attorney-General, and upon Mr. REGINALD EDWARD MANNINGHAM-BULLER, K.C., M.P., upon his appointment as Solicitor-General.

The King has been pleased to appoint Sir ERNEST HANDFORTH GOODMAN ROBERTS, K.C., to be a Commissioner of Assize on the Northern Circuit.

Mr. H. GLYN-JONES, K.C., and Mr. R. E. SEATON have been unanimously elected Masters of the Bench of the Middle Temple.

The Board of Inland Revenue have appointed Mr. A. W. BUCKLEY to be Deputy Controller of Stamps in succession to Mr. E. J. Cleall.

Mr. J. B. HORSMAN, assistant clerk to the Sheffield and West Riding Justices, has been appointed Clerk to the Justices at Wigan.

The following appointments are announced in the Colonial Legal Service: Mr. R. A. CAMPBELL, Resident Magistrate, Kenya, to be Judge of the Supreme Court, Aden; Mr. G. B. W. RUDD, Judge of the Supreme Court, Aden, to be Puisne Judge, Kenya; Mr. C. H. WHITTON, Registrar of Supreme Court, Federation of Malaya, to be Puisne Judge, Federation of Malaya; and Mr. P. A. CARNE to be Resident Magistrate, Tanganyika.

Personal Notes

Mr. H. J. Deane has announced his retirement on 31st March next from the office of Coroner for North Leicestershire.

Miscellaneous

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

ISSUE OF SHARES

In response to the recent offer of 50,000 £1 shares in the Society at 40s., applications were received for between four and five times the number offered. Allotment Letters were posted on the 23rd November, with an expression of the Directors' regret that it was not possible to allot more than a small proportion of those applied for.

SOCIETIES

The LAW STUDENTS' DEBATING SOCIETY announce the following debates for December, 1951: 4th December: "That the present system of training for the legal profession is archaic, unpractical and in need of drastic reform"; 11th December: "That this House would deplore the restoration of the university franchise"; 18th December: "That in the opinion of this House Santa Claus should not have been canonized."

PRINCIPAL ARTICLES APPEARING IN VOL. 95

29th September to 24th November, 1951

Lists of articles published earlier this year appear in the Interim Index (to 30th JUNE) and at p. 612, *ante* (7th July to 22nd September)

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).